

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

THEODORE RALPH LANDAKER,

Plaintiff,

v.

BISHOP, WHITE, MARHALL &
WEIBEL, P.S.; CAPITAL ONE BANK
(USA), N.A.,

Defendants.

CASE NO. C12-5898 RJB

ORDER GRANTING DEFENDANT
BISHOP, WHITE, MARSHALL &
WEIBEL, PS'S MOTION FOR
SUMMARY JUDGMENT AND
ORDER TO SHOW CAUSE

This matter comes before the Court on Defendant Bishop, White, Marshall & Weibel, PS's motion for summary judgment. The motion also seeks dismissal of the action against Defendant Capital One Bank (USA), N.A. The Court has considered the pleadings in support of and in opposition to the motion and the record herein.

INTRODUCTION AND BACKGROUND

Plaintiff Theodore Ralph Landaker filed this action against Defendants Bishop, White, Marshall & Weibel, PS., (Bishop) and Capital One Bank (USA) NA., alleging two causes of

1 action: (1) violation of the Fair Debt Collection Practices Act (FDCPA) 15 U.S.C. § 1692e and
2 (2) violation of the Fair Credit Reporting Act (FCRA) 15 U.S.C. § 1692. Dkt. 1.

3 Bishop is a law firm that specializes in retail collections law. Dkt. 8 pp. 1-2. Bishop was
4 retained by Capital One Bank to collect a debt on a credit card account with the named holder
5 Theodore R. Landaker. Dkt. 8 p. 3. Dkt 8-1. On July 10, 2012, Bishop requested that an
6 abbreviated credit summary be run in regard Theodore R. Landaker for the purposes of obtaining
7 and verifying the cardholder/debtor's address. Dkt. 1 pp. 3; Dkt. 8 pp. 2. The credit summary
8 does not identify specific creditors or provide anything other than generalized details regarding
9 Theodore Landaker's credit status. Dkt. 1 pp. 19-20; Dkt. 8-2 pp. 2-6. At the time the credit
10 summary was requested, neither Plaintiff nor Capital One Bank provided Bishop with a
11 statement that Plaintiff was a victim of identity theft. Dkt. 8 p. 2.

12 Bishop did not furnish the credit report summary to any third party or use it in any way
13 other than to determine the debtor's address. Dkt. 8 p. 2.

14 On July 12, 2012, Bishop sent a letter to Plaintiff, advising that Bishop represented
15 Capital One. Dkt. 1 p. 5; Dkt. 8-2 p. 8. The letter states that Capital One alleges that Plaintiff
16 owes \$ 4,112.83, but that no decision had been made regarding whether further action is
17 appropriate. *Id.* The letter states that unless Mr. Landaker disputes the validity of the debt, or
18 any portion thereof, within thirty days after receipt of this letter, Bishop will assume the debt to
19 be valid. *Id.* The letter further states that upon receipt of timely notification of dispute of the
20 debt, Bishop will provide verification. *Id.* The letter requests that Plaintiff make contact to try to
21 resolve the matter. *Id.*

22 On July 16, 2012, Plaintiff Theodore R. Landaker responded by sending a letter
23 disputing the debt on the ground that his son, Theodore Robert Landaker, had improperly used
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1 his social security number to obtain the credit. Dkt. 1 p. 10; Dkt. 8-2 p. 10. Plaintiff states that if
2 Bishop “were to look into the Thurston County Court records [Bishop] would see that he has
3 been prosecuted many times for applying for credit using my social security number.” *Id.*
4 Plaintiff enclosed a notice of dispute of the entire claimed debt and a demand for verification,
5 demanding documentation by way of a (1) copy of the signed application for the account, (2) list
6 of transactions along with copies of the sales slips, and (3) name of the creditor and proof of
7 authorization to collect the debt. Dkt. 1 p. 11; Dkt. 8-2 p. 11.

8 Pursuant to Plaintiff's suggestion, Bishop conducted a search of the Thurston County
9 Superior Court records and found no indication that a Theodore Robert Landaker had been
10 prosecuted for applying for credit using his father's social security number. Dkt. 8 p. 3; Dkt. 8-2
11 pp. 13-14.

12 On September 17, 2012, Bishop sent verification of the debt to Plaintiff. Dkt. 8-2. This
13 included copies of the account agreement and statements showing account detail verifying the
14 debt. Dkt. 8-1 pp. 2-83.

15 On September 17, 2012, Plaintiff sent a second letter to Bishop, again stating that his son,
16 bearing the same name, had improperly used Plaintiff's social security number for the purposes
17 of obtaining credit. Dkt. 1 pp. 7-8; Dkt. 8-2 p. 18. This letter stated that Bishop's conduct was
18 ruining Plaintiff's credit. Plaintiff threatened to commence a lawsuit against Bishop and
19 enclosed an unfiled copy of the instant complaint. Dkt. 8-2 pp. 18-23.

20 On September 21, 2012, Bishop sent Plaintiff a brief four-sentence letter requesting
21 documentation regarding his claim of fraud or identity theft. Dkt. 8 p. 3. No
22 further action was taken to collect the debt. No lawsuit was commenced against Plaintiff.
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1 On October 10, 2012, Plaintiff filed this lawsuit. Dkt. 1. Bishop moves for summary
2 judgment of dismissal of all claims.

3 SUMMARY JUDGMENT STANDARD

4 Summary judgment is proper only if the pleadings, the discovery and disclosure materials
5 on file, and any affidavits show that there is no genuine issue as to any material fact and that the
6 movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The moving party is
7 entitled to judgment as a matter of law when the nonmoving party fails to make a sufficient
8 showing on an essential element of a claim in the case on which the nonmoving party has the
9 burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). There is no genuine issue
10 of fact for trial where the record, taken as a whole, could not lead a rational trier of fact to find
11 for the non moving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586
12 (1986) (nonmoving party must present specific, significant probative evidence, not simply “some
13 metaphysical doubt.”). See also Fed. R. Civ. P. 56(e). Conversely, a genuine dispute over a
14 material fact exists if there is sufficient evidence supporting the claimed factual dispute,
15 requiring a judge or jury to resolve the differing versions of the truth. *Anderson*
16 *v. Liberty Lobby, Inc.*, 477 U.S. 242, 253 (1986); *T.W. Elec. Service Inc. v. Pacific Electrical*
17 *Contractors Association*, 809 F.2d 626, 630 (9th Cir.1987).

18 The determination of the existence of a material fact is often a close question.
19 The court must resolve any factual issues of controversy in favor of the nonmoving party only
20 when the facts specifically attested by that party contradict facts specifically attested by the
21 moving party. The nonmoving party may not merely state that it will discredit the moving
22 party’s evidence at trial, in the hopes that evidence can be developed at trial to support the claim.
23 *T.W. Elect. Service Inc.*, 809 F.2d at 630. Conclusory, non specific statements in affidavits are
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1 not sufficient, and “missing facts” will not be “presumed.” *Lujan v. National Wildlife*
2 *Federation*, 497 U.S. 871, 888–89 (1990).

3 Plaintiff has filed a response to the motion for summary judgment. This response does
4 not controvert any of the factual evidence submitted by Bishop. Instead, Plaintiff argues that
5 Bishop’s submissions are inadmissible evidence as not meeting the “business records rule
6 exception.” Dkt 10 pp. 1-3. Plaintiff’s objection is without merit. *See* Federal Rules of
7 Evidence 803(6) and 902(11); *United States v. Ray*, 930 F.2d 1368, 1370 (9th Cir. 1990).

8 In addition to the admissibility as business records, much of the evidence complained of
9 is attached to Plaintiff’s Complaint. *See* Dkt. 1 pp. 5-23. Plaintiff may not challenge documents
10 that he previously provided without objection to their authenticity. *See Maljack Productions,*
11 *Inc. v. GoodTimes Home Video Corp.*, 81 F.3d 88, 889 n.12 (9th Cir. 11996). Other records
12 complained of are in the nature of a public records of which the Court may take judicial notice.
13 *See* Fed. R. Evid. 201(b).

14 Plaintiff’s objections to the submitted documentary evidence are without merit. Not only
15 are many of the documents clearly business records, but they are also admissible on a number of
16 other grounds for purposes of summary judgment.

17 Plaintiff does request that summary judgment be denied and discovery be permitted. This
18 request could be construed as a motion pursuant to Fed. R. Civ. P. 56(d) to continue the
19 summary judgment and allow discovery. Rule 56(d) requires that the party seeking the
20 continuance must show that it lacks the facts essential to resist the summary judgment
21 motion. A Rule 56(d) applicant is entitled to relief only if he shows that the discovery would
22 uncover specific facts which would preclude summary judgment. *U.S. Cellular Inv. Co. v.*
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1 *GTE Mobilnet, Inc.*, 281 F.3d 929, 939 (9th Cir. 2002). Plaintiff has not (1) stated the specific
 2 facts he hopes to elicit from further discovery, (2) that the facts sought exist, or (3) that any
 3 sought-after facts are essential to resist the summary judgment motion, therefore he has not met
 4 any of the elements required to obtain a continuance. *See State of Cal. On behalf of Cal. Dep't of*
 5 *Toxic Substances Control v. Campbell*, 138 F.3d 772, 779 (9th Cir. 1998).

6 **FAIR DEBT COLLECTION PRACTICES ACT**

7 Plaintiff alleges that Bishop violated the FDCPA, 15 U.S.C. §§ 1692e(2), f(1) and g(b),
 8 by not providing sufficient documents to verify the debt and that Bishop is collecting a debt on
 9 behalf of Capital One that is not his, stating his son used his social security number to accrue the
 10 debt. Dkt. 1 pp. 1-4. 15 U.S.C. § 1692g(b) provides:

11 If the consumer notifies the debt collector in writing ... that the debt ... is disputed ... the
 12 debt collector shall cease collection of the debt ... until the debt collector obtains
 13 verification of the debt ... and a copy of such verification ... is mailed to the consumer by
 14 the debt collector.

15 Plaintiff alleges that Bishop failed to provide proper and timely verification of the debt
 16 and failed to cease its collection efforts even though it had not verified the debt.

17 Plaintiff's claim is without merit. Under the federal Fair Debt Collection Practices Act,
 18 15 U.S.C. § 1692g, verification of a debt involves nothing more than the debt collector
 19 confirming in writing that the amount being demanded is what the creditor is claiming is owed.
 20 *Clark v. Capital Credit & Collection Services, Inc.*, 460 F.3d 1162, 1173-74 (9th Cir. 2006). In
 21 *Clark*, the defendant obtained information about the nature and balance of the outstanding bill
 22 from the creditor and sent the plaintiffs a copy of the itemized statement provided by the
 23 creditor. The Ninth Circuit reasoned that the defendants were entitled to rely on their client's
 24 statements to verify the debt and did not have a duty to investigate independently the amount of

1 the claimed debt. *Id.* at 1174. Bishop's verification of the debt satisfied the requirements of 15
2 U.S.C. § 1692g.

3 Additionally, there was no violation of timeliness in the response to the request for
4 verification. A debt collector is not required to immediately verify a debt, but instead may cease
5 all collection activity on the account until verification is provided. *Guerrero v. RJM*
6 *Acquisitions, LLC*, 499 F.3d 926, 940 (9th Cir. 2007). Here, Plaintiff demanded verification of
7 the debt on July 16, 2012. Bishop ceased collection efforts until verification was provided on
8 September 17, 2012. Thus, Bishop did not violate 15 U.S.C. 1692g.

9 Plaintiff alleges that Defendants have violated 15 U.S.C. § 1692e(2), by the "false
10 representation of the character, amount, or legal status of any debt," and that Defendants violated
11 15 U.S.C. § 1692f(1), by using unfair or unconscionable means to collect or attempt to collect
12 any debt—i.e., attempting to collect an amount that is not "expressly authorized by the
13 agreement creating the debt or permitted by law." *See* Dkt. 1 p. 3.

14 Under 15 U.S.C. § 1692e(2), a debt collector may not use any false, deceptive, or
15 misleading representation or means in connection with the collection of a debt by providing a
16 false representation of character, amount, or legal status of any debt.

17 Under 15 U.S.C. § 1692f(1), a debt collector may not use unfair or unconscionable means
18 to collect or attempt to collect any debt, including the collection of any amount (including any
19 interest, fee, charge, or expense incidental to the principal obligation) unless such amount is
20 expressly authorized by the agreement creating the debt or permitted by law.

21 Plaintiff does not challenge the accuracy of the amount of debt sought to be collected.
22 The sole basis for this claim is the allegation that his son used his social security number and
23 accrued the debt at issue. Even assuming Plaintiff's claim to be true, there is no evidence that
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1 Bishop's conduct was "false" for purposes of § 1692e or "unfair or unconscionable" for purposes
2 of § 1692f. It is undisputed that, after receiving Plaintiff's statement that the debt belongs to
3 Plaintiff's son, Bishop only verified the debt, and made a request for documents to verify
4 Plaintiff's claim of alleged identity theft. A debt collector is entitled to rely on the creditor's
5 statements to verify the debt, within reasonable limits, and a debt collector does not have a duty
6 to independently investigate claims presented by creditor. *Clark v. Capital Credit & Collection*
7 *Services, Inc.*, 460 F.3d 1162 (9th Cir. 2006). There is nothing false, unfair, or unconscionable
8 in the actions of Bishop.

9 Further, all objective evidence (monthly statements and public records) reflects that the
10 debt belongs to Plaintiff. Defendant has presented undisputed evidence that Mrs. Landaker owns
11 the real property in Olympia to which monthly statements were sent from August 2009 to June
12 2011, that Plaintiff lived there since 2005 when he filed for bankruptcy, and that most charges
13 reflected on the monthly statements occurred in the area of Olympia, WA. It is also undisputed
14 that From July, 2011 to June, 2012, monthly statements were sent to an address in Florida where
15 Plaintiff's wife holds a driver's license and is registered to vote, and that the monthly statements
16 reflect that purchases during that time period were made from nearby businesses in Florida. It is
17 undisputed that at least one payment to Capital One was by check from the Landaker's account
18 showing their Olympia address on a check signed by Plaintiff. It further appears that Plaintiff's
19 son, Theodore Robert Landaker, has lived at various addresses, but never the address to which
20 statements were sent in Olympia or Florida. Other than Plaintiff's assertions, no evidence that
21 the debt belongs to his son is presented.

1 Plaintiff has not raised a material issue of fact that Bishop made false representation for
2 the purposes of 15 U.S.C. §1692e(2), or that Bishop's conduct was either unfair or
3 unconscionable for purposes of § 1692f.

4 The Fair Debt Collection Practices Act claims are subject to dismissal.

5 **FAIR CREDIT REPORTING ACT**

6 Plaintiff's Fair Credit Reporting Act claim is premised on the assertion that Defendants
7 obtained a credit report from credit reporting agencies "without permission or purpose." Dkt. 1
8 p. 3.

9 The Fair Credit Reporting Act (FCRA) is intended to safeguard against the improper
10 reporting of information on a credit report, either by the credit reporting agency or by the
11 furnisher of credit information, and against the improper disclosure of a credit report. *See* 15
12 U.S.C. § 1681(b); *Myers v. Bennett Law Offices*, 238 F.3d 1068, 1074 (9th Cir. 2001). Under the
13 FCRA, sections relating to willful noncompliance, § 1681n, and negligent noncompliance, §
14 1681o, only apply to "consumer reporting agencies," or "users of information," as defined by the
15 statute. *See e.g., Olson v. Atl. Mortg. & Inv. Corp.*, 24 F. Supp. 2d 976, 983 (D. Minn. 1998);
16 *Williams v. Amity Bank*, 703 F. Supp. 223, 226 (D. Conn. 1988). A defendant that that is neither
17 a "credit reporting agency" nor a "user of information," as defined by the FCRA, is not liable
18 under the civil sections of the FCRA. Where a party does not furnish reports containing
19 consumer credit information or other information on consumers to third parties it is not a
20 "consumer reporting agency." *See* 15 U.S.C. § 1681a(f); *Williams v. Amity Bank*, 703 F. Supp.
21 at 226. A law firm, such as Bishop, retained to collect on a debt is not a "consumer reporting
22 agency" as contemplated by the RCRA. *See Ditty v. CheckRite, Ltd., Inc.*, 973 F. Supp. 1320,
23 1332-33 (D. Utah 1997).

1 Nor is Bishop a “user of consumer reports” as contemplated by the FCRA. The FCRA
2 requires users of consumer information who deny credit or increase rates for the same due to
3 information contained in a consumer report to supply the consumer with the name and address of
4 the consumer reporting agency that furnished the report. See 15 U.S.C. § 1681m. A defendant
5 that has not denied credit or insurance or increased rates based on a credit report is not a user of
6 information for purposes of the FCRA. *Lema v. Citibank (S. Dakota), N.A.*, 935 F. Supp. 695,
7 698 (D. Md. 1996).

8 Here, Bishop took no adverse action based upon the credit summary. It merely verified
9 Plaintiff’s address for the purposes of its collection efforts. Bishop was not a “user of
10 information” as contemplated by the statute.

11 Bishop is not a credit reporting agency. Bishop did not supply information to a credit
12 reporting agency. Bishop is not a user of the report, because it took no adverse action based on
13 the report. Bishop did not violate § 1681 simply because it requested a credit summary. As a
14 matter of law, the FCRA simply does not apply to the facts before the court.

15 Even if Bishop were considered a “credit reporting agency” or “user of information,”
16 Bishop had a permissible purpose to obtain the report, under § 1681b(a)(3)(A), which was the
17 collection of an account.

18 Action taken in furtherance of the collection of a debt is also a permissible purpose
19 under 15 U.S.C. § 1681b(a)(3)(A). *Huertas v. Galaxy Asset Mgmt.*, 641 F.3d 28, 31 (3rd Cir.
20 2011)(Collection is a permissible purpose for obtaining a consumer report under the FCRA);
21 *Perretta v. Capital Acquisitions & Mgmt. Co.*, 2003 WL 21383757 (N.D. Cal. 2003)(Under
22 section 1681b(a)(3)(A), a party is permitted to obtain an individual's credit information in
23 connection with the collection of a debt).

1 The FCRA provides for the recovery of statutory and punitive damages for willful
 2 noncompliance with the statute. 15 U.S.C. § 1681n. Plaintiff has not established the elements
 3 required to show a violation of § 1681a(d), which are that the Defendant: (1) obtained a
 4 “consumer report” from a “consumer reporting agency”, (2) under false pretenses or knowingly
 5 without a permissible purpose, and (3) acted willfully when it requested the report. *Myers v.*
 6 *Bennett Law Offices*, 238 F. Supp. 2d 1196, 1201 (D. Nev. 2002). A showing of a permissible
 7 purpose is a complete defense. *Edge v. Prof'l Claims Bureau, Inc.*, 64 F. Supp. 2d 115, 117-18
 8 (E.D. N.Y. 1999); *Korotki v. Attorney Servs. Corp.*, 931 F. Supp. 1269, 1275 (D. Md. 1996).
 9 Action taken in furtherance of the collection of a debt is also a permissible purpose under
 10 15 U.S.C. § 1681b(a)(3)(A). *Huertas v. Galaxy Asset Mgmt.*, 641 F.3d 28, 31 (3rd Cir. 2011).

11 Bishop requested the credit summary to obtain Plaintiff’s address in the course of debt
 12 collection which is a permissible purpose. There is simply no evidence that Bishop obtained the
 13 report under false pretenses. The FCRA claim is subject to dismissal.

14 **DEFENDANT CAPITAL ONE BANK (USA) NA**

15 Defendant Bishop, White, Marshall & Weibel, PS requests that the Court dismiss this
 16 action as to Defendant Capital One Bank (USA) NA. Defendant argues that one only basis for a
 17 claim against Capital Bank is vicarious liability for any wrongful conduct of the Bishop law firm,
 18 and that, there being no viable claim against Bishop, Capital One is not subject to any liability.

19 Although Defendant’s contentions may be correct, it is not the appropriate party to plead
 20 a defense for Defendant Capital One. Accordingly, the request to dismiss the action against
 21 Capitol One will not be granted.

22 The docket reveals that an appearance has not been made on behalf of Defendant Capital
 23 One Bank (USA) NA., and it may have not been properly served with summons and complaint.

1 Thus, not only is there an issue of the viability of a claim against Capital One, there may be a
2 question has to whether jurisdiction has been obtained over this Defendant. Accordingly, the
3 Plaintiff is directed to show cause as to why Defendant Capital One Bank (USA) NA, should not
4 be dismissed form this action.

5 **CONCLUSION**

6 Therefore, it is hereby **ORDERED**:

- 7 1. Defendant Bishop, White, Marshall & Weibel, PS's Motion for Summary Judgment
8 (Dkt. 7) is **GRANTED**. Plaintiff's claims against this Defendant are **DISMISSED**
9 **WITH PREJUDICE**.
- 10 2. Plaintiff shall **SHOW CAUSE** in writing, if any he has, no later than December 19,
11 2012, why the Court has jurisdiction over Defendant Capital One Bank (USA) NA,
12 and whether a viable claim is presented against this Defendant. Failure to comply
13 with this Order will result in dismissal of this action against Capital One Bank (USA)
14 NA without further notice.

15 Dated this 4th day of December, 2012.

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18 ROBERT J. BRYAN
19 United States District Judge
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